

Office-Supreme Court, U.S.

FILED

FEB 27 1962

JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 604

HARRY CLIFFORD PORTER,

Petitioner,

—v.—

AETNA CASUALTY AND SURETY COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF PETITIONER

ETHELBERT B. FREY

3501 Rittenhouse St., N.W.

Washington, D.C.

Counsel for Petitioner

INDEX

	PAGE
PETITIONER'S BRIEF	
Preliminary Statement	1
Opinions Below	3
Jurisdiction	3
Question Presented	4
Statute Involved	4
Statement	5
ARGUMENT	7
United States Code, article 38	4, 8, 9, 10, 11, 12
CONCLUSION	18

TABLE OF CASES CITED

<i>Appancole County v. Henke, et al.</i> , 207 Iowa 835	15
<i>Atlantic v. Stokes</i> (1939), 165 S.E. 27	11, 15
<i>Ballard Estate</i> , 293 N.Y.S. 31 (1937)	11
<i>Ballinger v. U.S. ex rel. Ness</i> , 33 App. D.C. 308	6, 8
<i>Bellair Estate</i> (1937), 293 N.Y.S. 31	15
<i>Buxtons Estate</i> , 1944, 16 N.W. 2d 399, 246 Wis. 97	15
<i>Carrier v. Bryant</i> , 307 U.S. 545 (1939)	10, 12
<i>De Ruiz v. De Ruiz</i> , 66 App. D.C. 370	10
<i>Elvert Sales Co. v. Granite City Bank</i> , 192 S.E. 66 (1937)	15
<i>Frizzell v. United States</i> , 19 App. D.C. 48	6, 9
<i>Heoppel v. Westover</i> (1948), 79 F. Supp. 794	11, 15
<i>International Stevedoring Co. v. Haverty</i> , 272 U.S. 50	13
<i>Lawrence v. Shaw</i> , 300 U.S. 245 (1937)	11, 12, 15
<i>Nixon v. Nixon</i> , 203 N.D. 566	15
<i>Rudolph v. United States</i> , 1911, 36 App. D.C. 379	7

INDEX

	PAGE
<i>Sanford v. Sanford</i> , 52 App. D.C. 315	10
<i>Simon v. Simon</i> , 58 App. D.C. 158	10
<i>Surplus v. Remale</i> , 1949, 87 N.Y.S. 2d 651, 194 Misc. 1036	6
<i>Towne v. Eisner</i> , 245 U.S. 418	12
<i>Trotter v. Tennessee</i> , 200 U.S. 354	11, 13
<i>U.S. Trust Co. of N. York v. Helvering</i> (1939), 59 Sec. 602, 307 U.S. 59	11
<i>United States v. Day</i> , 27 App. D.C. 458	6, 9
<i>United States v. Goldenberg</i> , 168 U.S. 95	10
<i>United States v. Moore</i> , 95 U.S. 760, 763	6, 9
<i>United States v. Moyers, et al.</i> , 15 Fed. Rep. 411	6, 7, 9
<i>Waite</i> , D.C., Iowa 1897, 81 F. 359	6
<i>Walton, et al. v. Cotton, et al.</i> , 60 U.S. 355, 15 Law Ed. 653, page 359	6, 7
<i>Williams v. U.S. Fidelity and Guaranty Co.</i> , 71 App. D.C. 9, 107 F. 2d 210 (1939) decided August 7, 1935	6, 12, 15
<i>Yoke v. Yoke</i> (1936), 183 A. 555, 170 Md. 75	11, 15

STATEMENTS, RECENT AUTHORITIES CITED AND PHOTOSTATS

The statement of John E. Rankin of Mississippi in House Report, 74th Congress	8
Statement from Veterans Administration	17
Case of Arthur V. Kercoud, D.C. mental health case #35-57 decided by Judge Keeth of United States District Court of the District of Co- lumbia, December, 1959	15
Photostats and exhibits referred to in Brief	19-26

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 604

HARRY CLIFFORD PORTER,

Petitioner,

—v.—

AETNA CASUALTY AND SURETY COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF PETITIONER

Preliminary Statement

Petitioner, an ex-serviceman, and a patient at Saint Elizabeths Hospital, by his committee and attorney, makes this preliminary statement of the proceedings and what happened up to the time of the filing of an appeal by the respondent, Aetna Casualty and Surety Company in case #16066 of the United States Court of Appeals, District of Columbia Circuit.

The Aetna Casualty and Surety Company on, to wit, the 8th day of February, 1960, secured a judgment against petitioner in the case of *Aetna Casualty and Surety Company v. Harry Clifford Porter* in the United States District Court for the District of Columbia, numbered 57-57; this judgment was obtained on a so-called confession obtained

from Porter, who, at the time said confession was obtained, was declared by several psychiatrists, Erwin Tiplin, captain of the United States Army Air Force (M.C.), Dr. Amino Perretti and Dr. Joseph L. Gilbert (now deceased) on the staff of Saint Elizabeths Hospital in 1952, to be of unsound mind, not capable of knowing right from wrong. Immediately after said judgment, petitioner, by his committee and attorney, filed an appeal in said action in the United States Court of Appeals for the District of Columbia Circuit, which judgment after a hearing, was affirmed (this case in Court of Appeals is numbered 15664).

Thereafter the respondent, Aetna Casualty and Surety Company filed an attachment February 24, 1960 and a Motion for Condemnation thereafter on March 17th, 1960 of petitioner's funds deposited in the Columbia Federal Savings and Loan Association and the Prudential Building Association in case #57-57, attaching the disability or pension funds that petitioner's committee received from the Veterans Administration and which said committee had deposited by order of Court from time to time in the Columbia Federal Savings and Loan Association and the Prudential Bldg. Association for the benefit, care, keep and rehabilitation of said petitioner.

Petitioner's committee and attorney thereafter on March 1st, 1960, filed a Motion to quash the attachment and a reply to the Motion for Condemnation in said case; after a hearing in open Court and argument by counsel, the attachment and Motion of Condemnation were denied, and the Motion to quash, filed by petitioner's committee and counsel, was granted by Judge Youngdahl July 14, 1960, from which finding and order of said Court by Judge Youngdahl, the respondent, Aetna Casualty and Surety Company, appealed to the United States Court of Appeals for the District of Columbia Circuit, which appeal, numbered 16066 is before this Court.

After a hearing in this matter, two of the Judges of the Court of Appeals reversed the District Court's findings and order; the third Judge dissenting (R. 47 to 54). Thereafter petitioner, by his committee and attorney, filed a Motion for a rehearing, *en banc*, which was denied.

From the above ruling, petitioner (whose funds are attached), by his committee and attorney filed his petition for Writ of Certiorari September 18, 1961 *in forma pauperis* and which was granted December 11th, 1961, now before this Court.

Opinions Below

The opinion of the Court of Appeals has not been reported, but is contained in the record (R. 47-54).

The opinion of Judge Luther W. Youngdahl in case #57-57, United States District Court for the District of Columbia was written and filed in the matter July 14, 1960, a copy of which is attached hereto and made a part of record, transcript of record, pages 27 to 31 inclusive, as well as the opinion of the Court of Appeals; majority opinion and the dissenting opinion of Judge Prettyman was delivered July 13, 1961 (R. 47 to 54 inclusive).

Jurisdiction

The judgment of the Court of Appeals was entered on July 13, 1961 (R. 55); a timely petition for a rehearing, *en banc*, was presented, which was denied by said Court of Appeals on August 21st, 1961 (R. 65), case #16066, and thereafter a petition *in forma pauperis* for a Writ of Certiorari was filed in this Court September 18th, 1961 and was granted December 11th, 1961.

Question Presented

When a Court appointed committee of an incompetent veteran deposits disability benefits or pension funds by an order of Court in a savings institution upon the agreement between the committee and the institution that no shares of stock were purchased, but that the money, so deposited, could be drawn out the same as a bank account, upon the presentation of the deposit book, can such funds, which have not changed *their identity*, be attached under article 38 of the United States Code, sections 454 and 454A by a judgment creditor?

The following citations cover source of various legislation pertinent to the issue involved.

Act of August 12, 1935;
Act of October 17, 1940;
38 U.S. Code 454;
38 U.S. Code 454A;
Senate report 1092—74th Congress, 1st session;
Senate report 16—74th Congress, 1st session.

Statute Involved

The exemption statute, 38 U.S.C.A., section 3101, page 135 and sections 454 and 454A reads—

Payments of benefits due or to become due under any law administrated by Veterans Administration, shall not be assignable, except to the extent specifically authorized by the law and such payments made to or on account of a beneficiary, shall be exempt from taxation; shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable

process, whatsoever, before or after receipt by the beneficiary (Act of Congress, August 12, 1935).

This law has not been changed or modified.

Statement

This is an attachment by a judgment creditor on the funds under the control of a Court appointed committee that were deposited from time to time by his committee in two Savings Institutions, The Columbia Federal Savings and Loan Association and the Prudential Building Association, where they were deposited by order of Court and after committee had understood that he was not purchasing shares of stock, but depositing in said institutions the same as in a bank and that they paid interest on said deposits and said funds could be withdrawn at any time, the same as a bank account by or upon the presentation of the deposit book, and no notice was necessary (photostat copies of the deposit books are attached hereto and show no purchase of shares of stock was made).

At present, petitioner is not receiving any disability or pension funds, as under a recent order of the Veterans Administration, he, having at the time of the attachment over Fifteen Hundred Dollars in deposits, his pension or disability funds, were cut off completely, and that because of the said attachment filed herein February 24, 1960, he has no funds, whatsoever, even for the necessities of life at said Hospital, where he is confined, and for medical services or other personal necessities.

Petitioner's money or pension funds so received by committee, was placed under rule 23, section A of the United States District Court Rules, which made it mandatory for his committee in the instant case, to withdraw funds from time to time from the checking account and place them in approved institutions which would draw interest and aug-

ment or increase said funds from time to time where such funds would be readily available and could be drawn out on demand for the veteran's needs at any time upon the presenting of the passbook without formal notice; that the passbooks of said institutions or savings accounts show no purchase of shares of stock, as will be shown by the photostat copies of said entries, attached hereto and exhibited and marked Exhibit A1-A2—B1-B2, which clearly show that no shares of stock were purchased.

Petitioner, an indigent ex-serviceman, since his funds (disability or pension funds), have been attached, to wit, February 24, 1960, asks this Honorable Court to determine his constitutional rights under the law, *U.S. Code, Title 38*. The majority opinion of the Court of Appeals in the instant case proceeds upon the flagrant disregard of patient's constitutional rights; the United States Code, The Act of the 74th Congress, 1st session and the ruling held by the following cases:

Waite, D.C., Iowa 1897, 81 F. 359;

Williams v. U.S. Fidelity and Guaranty Co., 71 App. D.C. 9, 107 F. 2d 210 (1939) decided August 7, 1935;

Surplus v. Remale, 1949, 87 N.Y.S. 2d 651, 194 Misc. 1036.

A State or the District of Columbia cannot, by legislation or judicial interpretation, alter or change pension legislation.

*United States v. Moyers, et al., 15 Fed. Rep. 411;
Walton, et al. v. Cotton, et al., 60 U.S. 355, 15 Law Ed. 653, page 359;*

Ballinger v. U.S. ex rel. Ness, 33 App. D.C. 308;

United States v. Moore, 95 U.S. 760, 763;

United States v. Day, 27 App. D.C. 458;

Frizzell v. United States, 19 App. D.C. 48.

ARGUMENT

Petitioner Alleges That the Law Is Well Settled That a State Cannot, by Legislation or Judicial Interpretation, Alter or Change Pension Legislation.

It is also clear that although no one has a vested right to a pension, these rights are vested as long as the statute creating the pension remains in force and unchanged, subject to be divested at any time that the legislature may desire. *Rudolph v. United States*, 1911, 36 App. D.C. 379.

It is also evident that Congress, if inclined, could enact legislation for the sole purpose of providing its intended beneficiaries with its exclusive use and to prevent others from ever benefiting from these specific funds. In the case of *United States v. Moyers, et al.*, 15 Fed. Rep. 411, the Court, at page 417, in discussing the gratuitous nature of the pension, stated:

"Then it is not a right; it is a bounty; and if the government chooses to say that money shall go absolutely to the pensioner, irrespective of the claims of any creditor or anyone, it has a right to say so, and there is no doubt that such is the policy of the legislation, and that this is the State and Federal Courts, both of which have ruled these points just as I am ruling now".

The Supreme Court of the United States expressed similar sentiment, in the case of *Walton, et al. v. Cotton, et al.*, 60 U.S. 355, 15 Law Ed. 653 (p. 359):

"There can be no doubt that Congress had a right to distribute this bounty at their pleasure, and to declare it should not be liable to the debts of the beneficiaries. But they will be presumed to have acted under the ordinary influences, which lead to an equitable and not

to a capricious result. And where the language used may be so construed as to carry out a benefit policy, within the reasonable intent of Congress, it should be done".

The Act of August 12, 1935, *supra*, was called "An Act to safeguard the estate of veterans derived from payments of pension, compensation, emergency officers' retirement pay and insurance and for other purposes".

Representative John E. Rankin of Mississippi in House Report 16 of the 74th Congress, 1st Session, stated, referring to this Bill, on the floor of the House, in introducing it, said it was:

"Nothing in the world except a measure to throw around the veterans, the safeguards, which I think every American would want thrown around the estate of *insane* veterans" (70 Cong. Rec. 8556 (June 3, 1935)).

Since Section 454A, *supra*, amends Section 454 U.S.C.A., let us determine the object and effect of this amendment. Up to the amendment it appears that the exemption provision applied to all claims except those of the United States.

In the case of *Ballinger v. United States, ex rel. Ness*, 33 App. D.C. 308, the Court said:

"In legislation of this kind, requiring the performance of administrative duties by the head of a department to put it in execution, it is usual, as was done in the foregoing statute, to confer the power to make appropriate regulations for carrying the same into effect. Such supplementary regulations have all the force of law, if not in conflict with the law itself, or in plain excess of its requirements."

In *United States v. Moore*, 95 U.S. 760, 763, 24 L. Ed. 588, 589, the Court said:

"The construction of a statute by the department charged with its administration made and uniformly followed for a number of years, is always entitled to the most respectful consideration, and ought not to be overruled."

Following the same reasoning, the Court in *United States v. Day*, 27 App. D.C. 458 said:

"A settled construction by a department of the government of laws of the United States will not be overturned by the Courts unless clearly wrong."

Frizzell v. United States, 19 App. D.C. 48;
United States v. Moyers, 15 Fed. Reports 411.

The Veterans Administration was especially created for or concerned in the administration of laws relating to the relief and other benefits provided by law for veterans, their dependents and their beneficiaries.

Consequently great weight must be afforded the construction of the statute by the Veterans Administration. The Administrator of Veterans Affairs construed Section 454A, *supra*, T 38, in Section 13, 339, Code of Federal Regulations of the United States of America as follows:

"Section 13, 339 (a), Section 3, Public No. 262, 74th Congress (38 J.S.X. 454a), applies to payments made to or on account of a beneficiary under the laws relating to veterans and exempts such payments, either before or after receipt by the beneficiary, from the claims of creditors, and provides that same shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever. The language

of the Section has been construed by the Supreme Court of the United States to the effect that such exemption does not extend to property purchased such as real estate, stocks and bonds, in which the proceeds of such payments are or invested" (*Carrier v. Bryant*, 306 U.S. 545).

In *De Ruiz v. De Ruiz*, 66 App. D.C. 370, 88 F. 2d 752 (1936) the Court said:

"While it is the duty of the Court in interpreting legislation to ascertain, if possible, the intent of the legislature, we must not overlook the general rule of statutory construction that such intent is to be found in the language employed."

In *United States v. Goldenberg*, 168 U.S. 95, 103, 18 S. Ct. 3, 42 L. Ed. 394, the Court said, when the words used are plain, they give meaning to the act, and it is neither the duty nor the privilege of the Courts to enter speculative fields in search of a different meaning.

Petitioner and committee contend that the language of Section 454A, is plain and clear and not subject to speculative interpretation.

Another well established rule of statutory construction is that specific or special legislation, will prevail, when in conflict with general law, *Simon v. Simon*, 58 App. D.C. 158, 2d F. 2d 530. A further extension of this general rule was laid down in *Sanford v. Sanford*, 52 App. D.C. 315, 236 F. 777 wherein the Court ruled that general and specific provisions in apparent contradiction, whether in the same or different statutes, and without regard to priority of enactment, may subsist together, the specific qualifying and supplying exceptions to the general.

Petitioner holds that legislation, relative to pensions benefits of veterans, 38 U.S.C.A. 454A, is special legislation, affecting a specific class of individuals.

The payment of pensions or disability funds are intended primarily for the maintenance, care, keep and rehabilitation of said pensioner thereafter; they cannot be attached by a judgment creditor.

The question presented by this case is whether the exemption applies to these accounts in the Columbia Federal Savings and Loan Association and/or the Prudential Building Association, where the books show no shares were purchased, whether the account is "property" purchased in part or wholly out of such payments, rendering the exemption unavailable. In *Trotter v. Tennessee*, 200 U.S. 354 (1933) the Supreme Court held that lands purchased with veterans' benefits payments, were subject to taxation, the benefits having lost their exempt status when they were "converted into land and buildings," WHICH COULD BE TRANSFERRED (290 U.S. 356).

In *Lawrence v. Shaw*, 300 U.S. 245 (1937), the Court held that the deposit of veterans' benefits in a bank did not thereby render the funds non-exempt, as well as the following cases:

Ballard Estate (1937), 293 N.Y.S. 31;
Atlantic v. Stokes (1939), 165 S.E. 27;
Yoke v. Yoke (1936), 183 A. 555, 170 Md. 75;
U.S. Trust Co. of N. York v. Helvering (1939), 59 Sec. 602, 307 U.S. 59;
Heoppel v. Westover (1948), 79 F. Supp. 794.

These payments are intended primarily for maintenance and support of the veterans. To that end, neither he nor his committee is obliged to keep the monies on his person or under his roof (300 U.S. at 250).

Accordingly, it has been held in this Circuit that a checking account is exempt. *Williams v. U.S. Fidelity and Guaranty Co.*, 71 App. D.C. 9, 107 F. 2d 210 (1939) likewise a savings account is exempt. But MR. JUSTICE HOLMES has instructed us:

"A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used." *Towne v. Eisner*, 245 U.S. 418, 425 (1918).

Is money deposited in a savings account or in a building association, which has not changed its identity, the same as a bank account and which can be drawn out without a notice on demand with passbook, exempt?

In *Carrier v. Bryant*, 307 U.S. 545 (1939), the Supreme Court was asked to decide whether negotiable notes and United States bonds purchased with veterans' benefits by a veteran's guardian were exempt from execution on a judgment against the veteran. The Court held the *property* subject to execution, quoting from the *Lawrence* case to the effect that:

"The provision of the Act of 1935 that the exemption should not apply to *property* purchased out of the moneys received from the government shows the intent to deny exemption to *investments in real estate*, as was ruled in the *Trotter* case" (306 U.S. at 550, quoting from 300 U.S. at 250). (Emphasis supplied.)

The statute there involved was 53 of the Act of August 12, 1935, c. 510, 49 Stat. 607 which was not significantly different from 38 U.S.C.S. 3101.

"Investment of trust funds, unless otherwise provided in the instrument creating the trust, or except under

extraordinary conditions set forth fully to the Court, will ordinarily be sanctioned only when made in the obligations meeting the requirements herein set forth."

And see *International Stevedoring Co. v. Haverty*, 272 U.S. 50 (1926). Because our local rules speak of a deposit in a savings and loan association or building association as an "investment" *does not necessarily mean it is an "investment"*.

Section 3101 does not speak of "*investment*". The statute speaks of *any property purchased* in part or wholly out of such payments. When CHIEF JUSTICE HUGHES used the word "investment" in *Laurence v. Shaw*, quoted above, he was referring to the *Trotter* case. The only sentence in *Trotter* case in which the word "investment" appears is the following: *Money invested in real estate is not exempt* (290 U.S. 351).

We see no token of a purpose to extend a like ruling where money is deposited in a bank, a saving association or building association, where it has not lost its identity as in the instant case.

Diligent inquiry has been made with both building associations in which the deposits were made and with other like associations: all conclude and hold that such deposits are money or funds, and not purchase of stock.

Where building and loan associations hold that such deposits are the purchase of "shares", they still hold that such deposits are cash or money and not stock.

The local Inheritance Tax Bureau also holds and treats said deposits, upon the death of a decedent, as cash and/or money, and not stock and treat it as such. So does the Register of Wills Office of the District of Columbia.

Reading the word "investment" in the light of this statement is quite noticeable; an immunity was not to extend to permanent investments. As further clarification, the Court SAID:

" * * * we think it very clear that there was an end to the exemption when they *lost the quality of moneys* and were *converted into land and building*" (290 U.S. at 356) (emphasis supplied),

something that can be sold or transferred.

Moneys deposited in a saving association or building association by the committee by order of Court of a veteran, *have not "lost the quality of monies"; they have not been "converted" into "property"*, as in this particular case; no stocks or shares were purchased, *but only deposited for holding, as the books will show (copy of entry in books, Exhibits A-1, A-2 and B-1, and B-2 and attached hereto)*.

Indeed, in *Lawrence*, bank deposits were held exempt from taxation and after stating that it would be possible "under a special agreement" for deposits to "assume the character of investments," the Court carefully pointed out, "*we do not suggest that a mere allowance of interest upon deposits would be enough to destroy an immunity where it would otherwise attach.*" The important factor would appear to be not an overly legalistic conception of the nature of the bank accounts, *but rather the case with which "the proceeds of the collection are subject to withdrawal; THE SAME AS IN A BANK ACCOUNT.*

That a depositor in a savings and loan or building association does not necessarily purchase shares, but is a creditor-depositor of the association, is a matter of form, which, in the opinion of the petitioner should have no bearing on the resolution of the problem here involved—just as the probability that a deposit in a checking account will not

receive on demand the specific money deposited, but rather an equal sum of money in like kind, afforded no difficulty to the Court in WILLIAMS, *supra*. And see *Elvert Sales Co. v. Granite City Bank*, 192 S.E. 66 (1937).

It simply was a draft upon demand for the veterans' use (300 U.S. at 250).

As a practical matter, a withdrawal from a savings account can be accomplished as quickly as a withdrawal from a checking account—and this is true whether the savings account is in a savings bank, savings and loan, or building association. A checking account is immune; a savings account likewise, should be. Furthermore, the Congressional purpose to immunize veterans' benefits would indicate that a liberal construction should be given the statutory grant of immunity. See *Mixon v. Mixon*, 203 N.D. 566, 166 S.E. 516 (1932); *Yake v. Yake*, 170 Md. 75, 183 A. 555 (1936); cf. *Hoeppel v. Westover*, 79 F. Supp. 794 (D.C. Cal. 1948). The following cases hold that money (Veterans' funds) placed in bank or saving account is exempt.

Williams v. U.S. Fidelity and Guaranty Co., 1939, 107 F. 2d 210, 71 App. D.C.;
Bellair Estate (1937), 293 N.Y.S. 31;
Atlantic v. Stokes (1939), 165 S.E. 27;
In Re Guardianship Le Letourmen, exemption good except to real estate and bonds;
Buxtons Estate, 1944, 16 N.W. 2d 399, 246 Wis. 97;
Lawrence v. Shaw, hereinbefore used, 300 U.S. 245.

In a recent case of *Arthur v. Kercoud*, mental health case #35-57 in the United States District Court and decided in December, 1959 by Judge Keech of our Court in which he held that where pension funds were put or deposited in a building and loan association, it did not lose their identity and were exempt and unattachable under

United States Code 38. And several of our other Courts in this jurisdiction have decided the same.

In *Appanoose County v. Henke, et al.*, 207 Iowa 835, the Court held that the *co-mingling of pension money and interest thereon, did not loose their identity and did not stop the claim of exemption.*

The purpose of the law and the order of Court is to preserve the assets of the incompetent's estate, and at the same time, to receive some yield, thereby augmenting the assets from time to time, all in the interest of the incompetent so that when he is restored to normalcy mentally and discharged as such, he will have some estate to take care of himself during his rehabilitation in an orderly society and not become a charge upon the community.

This being true, it is inconceivable to believe that a Court would pass and enter such an order, knowing at the time that such an order is an instrumentality of personal benefit to a creditor of the incompetent if such funds on deposit in banking institutions are attachable.

Should a committee fail or refuse to obey the mandate of the Court, he would be subjecting himself in contempt of Court, removal and other possible consequences. If the committee knew that such deposits were attachable and placed the funds in a safety deposit box, he would be rendering a greater service to his ward than by obeying the Court's mandate as such funds would then be unattachable, but by so doing, he would, nevertheless, be subject to contempt and removal, even though under the circumstances, the committee would be rendering a fuller and greater service to his ward than would the Court.

From the above comment and the primary purpose of the law, heretofore cited, your petitioner cannot believe

that the Court would hold that such funds, which have not changed or lost their identity, are attachable.

To hold otherwise, the purpose of the law and order of the Court would be defeated.

The Veterans Administration herein alleges that over one hundred and five thousand incompetent veterans, who are under legal disability are dependent upon these compensation benefits for their livelihood, care, keep, necessities and for rehabilitation purposes, and that of this date said beneficiaries have estates in excess of \$750,169,000; nearing all of which were derived from veterans' benefits and deposited in interest bearing accounts in banks and saving institutions; all of which would be subject to creditors, attachments and liens, should this Honorable Court allow the ruling of majority opinion of the United States Appellate Court for the District of Columbia Circuit and numbered 16066, stand.

The Exhibits in this case and asked to be read herewith, are as follows: Exhibits A-1, A-2 and B-1, B-2 attached hereto.

Petitioner says that from the reports of the doctors at Saint Elizabeths Hospital, his mental condition has improved to such an extent that shortly they will request his release and discharge; this cannot be done for at present he has no funds for rehabilitation purposes, but will still be a charge of the United States Government, which claims he owes them for care and treatment over Five Thousand dollars at the present time. Committee received a letter from the U. S. General Accounting Office, attached hereto, marked Exhibit C, and asked to be read herewith. This claim began to run against petitioner before the date of judgment, February 8, 1960 and should have priority.

Conclusion

For the foregoing reasons and the law involved herein it is respectfully submitted that the judgment of the Court of Appeals Circuit of the District of Columbia, and numbered 16066 should be reversed, and the order of Judge Youngdahl of the United States Court for the District of Columbia in case numbered 57-57 should be affirmed.

Respectfully submitted,

ETHELBERT B. FREY
Counsel for Petitioner

Photostats

Appellee's Exhibit A-1 and A-2 is the record of initial deposits in the Columbia Federal Savings and Loan Association.

Exhibit B-1 and B-2 is the record of initial deposits in the Prudential Building Association.

These Exhibits are attached hereto and follow this page.

Also attached hereto are Exhibits marked C-1 and C-2, which are a letter from Winfred Overholser, M.D., Superintendent of Saint Elizabeths Hospital together with bill for care and treatment of Appellee Harry Clifford Porter.

EXHIBIT A-1

SAVINGS ACCOUNT
No. 31337

This Certifies that

Ethelbert B. Frey, Committee of the Estate
of Harry C. Porter

holds a Savings Account representing share interests in Columbia Federal Savings and Loan Association, subject to its charter and bylaws, the Rules and Regulations for the Federal Savings and Loan System, and to the laws of the United States of America.

COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION

The individual Savings Account of each member is insured up to \$10,000. Joint accounts and joint savings accounts are similarly protected. A husband and wife can each have an account insured up to \$10,000 and a joint account insured up to \$10,000, less a total of \$30,000 is insured.



IN
COLUMBIA FEDERAL SAVINGS

EXHIBIT A-2

SAVINGS ACCOUNT
No. 31337
COLUMBIA FEDERAL SAVINGS AND LOAN ASSOCIATION
WASHINGTON 1, D. C.

DATE	PAYMENTS	WITHDRAWALS	BALANCE
MAY 11 55	3,000.00		3,000.00 CFA
JAN 4 56	JUN 55 DIV 55 7.50		3,052.61 CFA
JAN 4 56	DIV 55 45.11		4,052.61 *
JAN 6 56	1,000.00		4,123.52 *
DEC 6 56	JUN 56 DIV 56 70.91		4,123.52 *
DEC 6 56	1,000.00		5,123.52 *
DEC 27 57	DEC 56 75.07		5,198.59 CFA
DEC 27 57	DON 57 90.97		5,289.56 CFA
DEC 27 57	DIV 57 92.56		5,382.12 CFA
JAN 8 59	DUX 58 94.19		5,382.12 CFA
JAN 8 59	DIV 58 95.83		5,831.88
	DIV		\$ 5,831.88

JAN 8 59	DIV 58	\$ 5.83	5,572.14 CFA
JAN 19 60	DV159	48.76	5,620.90 CFA
JAN 19 60	DV259	56.20	5,677.10 CFA
JAN 19 60	DV359	56.77	5,733.87 CFA
JAN 19 60	DV459	57.33	5,791.20 CFA

EXHIBIT B-1

Shares

No. 18215

Ethelbert B. Frey
Committee for Harry C. Porter
600 International Building
1319 F Street, Northwest
Washington, D. C.

member of The Prudential Building Association, Washington, D. C., subject to the lawful provisions of its constitution and by-laws.

Date March 3 19 59

**ALWAYS BRING THIS BOOK WITH YOU
OR MAIL WITH PAYMENT.**

IMPORTANT

This book must accompany all transactions.

Remittances may be made through the mail by check or money order.

All items credited in this book are subject to final collection of check or draft.

Members should notify the Association of any change of address. This will insure the delivery of Association reports and correspondence.

Keep this book smooth and clean. If lost, notify the Association immediately.

Safety of your Account in this Association is fully insured up to \$10,000 by the FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION, Washington, D. C., an instrumentality of the United States Government.

EXHIBIT B-2

Shares _____

No. 18215

THE PRUDENTIAL BUILDING ASSOCIATION WASHINGTON 5, D. C.

DATE	PAYMENTS	WITHDRAWALS	BALANCE	MM
MAR 3 59	3,0 0 0.00		3,0 0 0.00	P-
DV259	9.36		3,0 0 9.36	PM
DV359	28.21		3,0 3 7.57	PM
DV459	30.38		3,0 6 7.95	PM
OCT 21 59		2,0 0 0.00 -	1,0 6 7.95	PM
DV1160	1 0.68		1,0 7 8.63	P-
JAN 11 60	2,0 0 0.00		3,0 7 8.63	P-
DV260	30.79		3,1 0 9.42	PM
JUN 2 60		6 2 5.36 -	2,5 0 8.90	PM
DV3	24.84		2,5 3 3.99	PM
DV4	25.09	- 1 6 2.50 -	2,3 7 1.49	PM

1319 F Street, N. W.
Washington, D. C.

Payer with his remittance.

SEE INSTRUCTIONS BELOW.

Date	DESCRIPTION	Quantity	Unit Price		Amount
			Cost	Per	
	For cost of care and treatment furnished Harry C. Porter, #78,826, under the provisions of Public Law 313, 84th Congress, for the period October 1, 1960 thru December 31, 1960.	92	8.16	day	750 72
	Previously billed and unpaid				2,194 18
	MAKE CHECKS PAYABLE TO: SAINT ELIZABETHS HOSPITAL				
753099			AMOUNT DUE THIS BILL,		\$ 2,944 90

Exhibit C-2

This is not a receipt

25

INSTRUCTIONS

Tender of payment of the above bill may be made in cash, United States postal money order, express money order, bank draft, or check, to the office indicated. Such tender, when in any other form than cash, should be drawn to the order of the Department or Establishment and Bureau or Office indicated above.

Receipts will be issued in all cases where "cash" is received, and only upon request when remittance is in any other form. If tender of payment of this bill is other than cash or United States postal money order, the receipt shall not become an acquittance until such tender has been cleared and the amount received by the Department or Establishment and Bureau or Office indicated above.

Failure to receive a receipt for a cash payment should be promptly reported by the payer to the chief administrative officer of the bureau or agency mentioned above.

EXHIBIT C-1

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SAINT ELIZABETHS HOSPITAL
WASHINGTON 20, D. C.

78,826

In reply refer to: FIN/JWH

ADDRESS ONLY
THE SUPERINTENDENT
SAINT ELIZABETHS HOSPITAL

Re: Harry C. Porter
January 12, 1961

Mr. Ethelbert B. Frey, Esq.
Attorney and Counsellor at Law
600 International Building
1319 F Street, N. W.
Washington, D. C.

Dear Mr. Frey:

Enclosed is Bill for Collection, in the amount of \$750.72, covering the cost of care and treatment for your ward, Harry C. Porter, for the period October 1, 1960 through December 31, 1960. The total amount now due and unpaid is \$2,944.90.

Sincerely yours,

Winfred Overholser

Winfred Overholser, M. D.
Superintendent

Enclosure - 1

*Part of this was inserted in left. Feb 8, 1961.
as the bill from Dec. 14, 1960.*

EXHIBIT C-2

Standard Form No. 1114
GAO 1030
1114-103

BILL FOR COLLECTION DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SAINT ELIZABETHS HOSPITAL

(Department or Establishment and Bureau or Office)

Washington, D. C.

(Address)

Bill No.
288

Date
12-31-60

PAYER:

Ethelbert B. Frey, Comm.
600 International Building
1319 F Street, N. W.
Washington, D. C.

This bill should be returned by the
payer with his remittance.

SEE INSTRUCTIONS BELOW.

Date	DESCRIPTION	Quantity	Unit Price		Amount
			Cost	Per	
	For cost of care and treatment furnished Harry C. Porter, #78,826, under the provisions of Public Law 313, 84th Congress, for the period October 1, 1960 thru December 31, 1960.	92	8.16	day	750.72
	Previously billed and unpaid				2,194.18
	MAKE CHECKS PAYABLE TO: SAINT ELIZABETHS HOSPITAL				Exhibit C-2
753099	AMOUNT DUE THIS BILL,		\$ 2,944	90	

This is not a receipt